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AUTHOR Barwis, Gail Lund
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ABSTRACT

This paper examines the Newspaper Guild's efforts to secure three types of contractual rights for newsroom employees: employee voice in news content and quality; protection of employee integrity; and employee privileges when protecting news sources. Specific incidents of the guild's contractual negotiations are discussed as they relate to a comparison between the guild's model contract and 189 contracts that the guild has negotiated since 1970, indicating that the largest gains have occurred in provisions for joint committees (employee voice) and for protection of employee's byline (integrity), with limited gains in provisions for news-source protection (employee privilege). The paper concludes that the significance of these gains is blunted by the fact that no arbitration cases or litigation have occurred to make the National Labor Relations Board establish policy on the three issues. A list of 18 items from the guild's model contract is appended, and a table shows the percentages of the 189 negotiated contracts that contain provisions for employee voice, integrity, or privilege. (RL)

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CONTRACTUAL AGREEMENTS IN NEWSROOM DEMOCRACY

By

Gail Lund Barwis*

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CS203 810

*Candidate for the Ph.D. Degree in Mass Media
Michigan State University
East Lansing, Michigan

CONTRACTUAL AGREEMENTS IN NEWSROOM DEMOCRACY

Introduction

Freedom of the press traditionally has been equated with the publisher's right to determine the content of the news product. But today those who write the news are demanding--and winning--a consultative role in the generation, selection and presentation of news.

Since 1970 The Newspaper Guild (TNG), the union which represents approximately 40 per cent of the reporters in this country, has been actively bargaining with publishers on issues that relate to a movement called reporter power or newsroom democracy. The issues center around (1) employe voice in the selection of supervisory personnel, representation on editorial boards and committees dealing with questions of news content and quality; (2) protection of employe integrity through the use of bylines, assignment of work, presentation of material and defense of the work product; and (3) employe privilege against forced disclosure of news sources and indemnification of employes refusing to disclose sources.

The newsroom democracy concept has been defined in Guild bargaining by contract proposals covering the above three areas. Voice, Integrity and Privilege. All three are included in the Guild's Model Contract, which is used as a guide by

members of the union in negotiating new contract terms with the publisher. The three areas were adopted as part of official Guild policy at the organization's 1970 convention.

Every Guild editorial unit is required to propose for inclusion in a new or renewed contract the Model Contract provisions for employe Integrity and Privilege. The provisions for Voice in the product are optional bargaining subjects (designated as collective bargaining "Recommendations" by the Guild). The wording of these model contract provisions are given in Appendix A (p. 29). (The provisions are subdivided into 18 separate items for the purpose of analysis.)

This report discusses the gains made by The Newspaper Guild in securing these newsroom democracy rights in contracts, and the implications such contractual rights have for the future of newspaper reporting and publisher-employe relations in the industry. It does not attempt to assess the theoretical legitimacy of the Guild's philosophy in seeking such rights. Yet to grasp the dramatic impact the acceptance of Guild proposals would have on the traditional functioning of the newsroom, an understanding of the role labor-management relations plays in the industry is essential.

Background

In its broadest context, newsroom democracy is one form of industrial democracy; that is, a system which allows for employe input in the decision-making process.

Industrial democracy is a relatively new concept in the United States. It has, however, been an active concern among labor groups in Western Europe for several decades.

The general theory behind industrial democracy (or worker participation as it is also known) is that the industrial system is improved by providing for employe input at the decision-making level. Factors defining an "improved system" include (1) more positive attitudes by employes toward their jobs, (2) increased job satisfaction, (3) greater interest in producing a better product, (4) greater interest in being associated with the product and (5) better employe-employer relations.

Studies by Herzberg,[1] Argyris,[2] and Likert[3] have focused on the importance of job content, interest, relations with superiors and peers as determinants of involvement, satisfaction and attitudes. They suggest that job enrichment, participative styles of management and increased employer-employe consultation improve worker effectiveness.

One means for gaining greater worker participation is through collective bargaining. But Carmichael contends that traditionally the U.S. system of industrial relations rejects the concept of worker union representation in official managerial bodies.[4]

Daniel suggests that part of this rejection may lie in the fact that the union often is not viewed by employes as a channel of involvement.[5]

> Workers expect union action in only very limited areas because their experience of union policy and practice has led them to expect this. Employers' traditional reluctance to see an extension of joint regulation has confined union activity to these areas, and the trade-union movement has been too willing to confine the scope of its activities. It has limited its efforts on the industrial front to narrow economic goals, to...improving wages, hours and conditions... It should now be clear that...trade unions are increasingly going to need to concern themselves with these matters if they are going to satisfy the rising demands of their members.

Directly related to the concept of industrial (or newsroom) democracy is that of management rights; that is, those areas of an organization's operation which are considered to be exclusively management controlled.

The Labor Management Relations Act (LMRA) states that management must bargain collectively only over "wages, hours and conditions of employment." If an issue does not fall into one of those three categories, management may consider it a "permissive" subject and has the right to refuse to discuss it at the bargaining table.

Although management is still in control of the work force and operations, there has been a general broadening of the issues which fall under the conditions of employment umbrella.[6,7,8]

Chamberlain views this expansion as a logical extension of our democratic philosophy [9]

> The fact is that tradition is on the side of an expanding union influence, not of its constriction. And this expansion of employe participation through a representative organization is consonant with and fulfilling of an historical developing philosophy of social and political organization.

With the growth of professional unions, as among nurses and teachers, areas once considered management prerogatives are now being opened for collective bargaining, and the parallel between classroom and newsroom democracy is striking. Such problems as the nature and content of curriculum, selection of textbooks and other teaching materials, and assignment of teachers to nonteaching functions are regarded both as vital professional concerns and as "working conditions."

Traditionally, publishers have held that editorial decisions are strictly management prerogatives, and in its early years the Guild concurred.[10] In fact the Guild took the route of trade unionism (strictly bread-and-butter bargaining) and set aside any discussion of non-economic rights for reporters until the beginning of this decade.

In Western Europe, however, reporters' rights had a much earlier beginning. The reporter power movement began in France shortly after World War II when news organs in Paris that had cooperated with the German occupation forces were turned over to journalists and businessmen for reorganization to ensure freedom of the press from government and financial control. Le Monde became the model from which spread the plan for working journalists to participate in policy decisions and management of newspapers.[11]

Currently Le Monde is controlled by its writers organized under the Corporation of Journalists of Le Monde (CJM) with Jean Schwoebel as its head. According to a 1968 agreement, the CJM holds 40 per cent of the ownership of the paper, which is run

on a non-profit basis for the dissemination of information.

At Le Figaro (also in Paris) the editorial staff formed an editorial association in July 1965 and went on strike in 1968 for greater power in the operation of the newspaper. Today the corporation is run by a 12-member supervisory council--7 of the 12 representing the noneditorial workers. But since all major decisions must have the backing of at least nine council members, the editorial staff has effective veto power. The council also chooses a five-member directorate, two of whom must be journalists. The directorate is charged with the more immediate problems of the paper's functions.

Change has not come rapidly, suggests Gruson in an examination of the French experience.[12] The present structures at Le Monde and Le Figaro evolved over a 20-year period.

An arrangement similar to that at Le Figaro was established at Paris-Normandie in 1972.

In Italy the editorial union of journalists (National Press Federation) is making some inroads in its attempts to gain control of the editorial side of newspapers.[13]

Recently redefined bylaws at the West German magazine Der Stern state that none of the editors or workers can be forced to do, write, or defend anything which is against what they believe. Their refusal to do so cannot be held against them. A seven-member elected staff committee represents the interests of the editors and safeguards the journalistic independence of the magazine. Any change in ownership has to be brought to the attention of the editorial committee before it is effective.

The hiring or dismissal of the executive editor must also be brought to the committee's attention before the contract is signed or terminated. Stories can be shortened only if financial reasons make it absolutely necessary. And in such cases the editorial committee must be informed beforehand.

At Die Ziet, an independent German weekly newspaper, the bylaws state that the publisher cannot act against the wishes of the majority of editors who have held their positions for more than two years. Major changes in the structure of the paper or editorial organization must be discussed with the editors.

In the Netherlands after 12 years of negotiations the Nederlandse Dagblad Pers, the organization of newspaper enterprises, and the Nederlandse Veriging van Journalisten, the journalists' union, accepted the final version of the Model Charter for Editors-in-Chief and Editorial Staffs in May 1976.[14]

As of Jan. 1, 1977, every newspaper was required to introduce a version of this Model Charter after consultation with the three parties to the agreement: editorial staff, the editor and the management. After that an editorial council must be consulted on important decisions of a newspaper's policy. Management may not take action without prior advice from the editorial council on the appointment or dismissal of the editor, changes in editorial principles and aims of the paper, or changes in the editorial staff.

The charter clearly delimits the functions and responsibilities of both the editor and the manager. The editorial council is the organ for editorial participation in all matters pertaining

to editorial work. It consists of the editor and at least five members elected by the editorial assembly.

The right of the editor to change articles or to give orders regarding editorial work is not denied. But when a member of the staff objects to an order and does not accept the decision taken by the editor, he can appeal to the editorial council. The same applies where an editor has ordered changes in articles. If the article is bylined, the writer may request his name be removed.

The International Federation of Journalists (IFJ) in 1972 passed a five-point resolution calling for (1) regular consultation with employes on editorial operations; (2) staff veto power over appointments to 'leading positions' such as editor; (3) veto power over changes in ownership, (4) a journalist's protection against being required to express an opinion contrary to his convictions; and (5) consultation with employes on all decisions affecting their work.[15] These resolutions cover many of the same areas found in The Newspaper Guild's Voice, Integrity and Privilege clauses.

In the United States and Canada, the Guild's interest in providing newsroom democracy protection for its members was first aroused in late 1968 in the aftermath of the Democratic National Convention in Chicago. Physical assaults against reporters and photographers and a reign of media criticism and condemnation of reporters (some self-inflicted) prompted a group of Chicago newswriters--many of whom were Guild members--to form the Association of Working Press. Among their objectives

were the improvement of professional standards of fairness and accuracy in the media and public condemnation of obvious breaches of journalistic ethics.[16]

The group began publication of the Chicago Journalism Review in October 1968 as an outlet for criticism of media management shortcomings. Soon the rumblings in Chicago echoed across the country as reporters sought to protect themselves and their integrity.

The idealism among younger members of TNG and the treatment received by reporters during the 1968 Democratic National Convention provided sufficient impetus for the adoption in 1970 of newsroom democracy clauses in the Guild's Collective Bargaining Program.

At TNG's annual convention in 1970, the Collective Bargaining Committee of the Guild reported [17]

> The Committee believes that gearing the Guild to the '70s calls for expanding [the Guild's] mandatory bargaining program to focus locals' attention newly or in larger measure on a more direct voice in the product their members turn out, on greater protection of newspaper employes in the exercise of their First Amendment rights, on greater protection for the employe's right to protect his integrity..[and] on greater protection of members in all their activities as citizens....

The Guild's International Executive Board then proposed new Voice, Integrity and Privilege Against Disclosure provisions. They were adopted by vote of the convention delegates and were incorporated in the new Bargaining Program.[18]

In general, the Guild's success in securing Privilege and Integrity clauses in contracts peaked during fiscal 1974 (March 31, 1973 to March 30, 1974). Gains in Voice, however,

have been minimal over the past six years.

Table 1 shows the frequencies and percentages of Guild contracts containing newsroom democracy clauses.

The data were collected from 189 Guild contracts on file at the Washington international headquarters as of Sept. 1, 1976.[19] The Voice, Integrity and Privilege proposals were divided into 18 separate items, and the contract language for each item was coded in four categories. (1) no coverage, (2) coverage but with qualifications, omissions and/or restrictions on the Model Contract language or its equivalent, (4) Model Contract language or its equivalent but with additional beneficial language.

Findings and Discussion

Voice

Of the three Voice in the product statements sought by the Guild, the only one which has had a favorable reception from publishers is a joint committee to discuss editorial matters or an inclusion under the grievance procedure for taking up matters 'affecting the relations of the employe and the Employer.

The majority of contracts (59.5%) do contain some form of Voice guaranty. But not all of the Voice was gained in the past six years. To be sure, the Voice committees were promoted during that time, but the language of 'or affecting the relations of the employe and Employer' as part of the Model Contract has been in effect through administrative action for a much longer period of time.

The Guild's most active spokesman on Voice is John Carmichael, executive secretary of the Twin Cities Newspaper Guild. Carmichael in 1972 first secured a joint Guild-management committee at the Minneapolis Star and Tribune to meet monthly to discuss matters related to employment but not in violation of the contract.[20]

Has the committee been effective? Carmichael believes it has and considers its greatest achievement to be an improvement in communication.[21]

The necessary ingredients are there, Carmichael said. "The top newsroom executives are present, and there are no limits to the questions that can be raised." Subjects range from policies and quality of the product to nuts and bolts such as requests for more typewriters or filing cabinets.

After the Minneapolis Star and Tribune committee had been in effect for about four years, the publisher of the Twin Cities sister papers, the St. Paul Dispatch and Pioneer Press, signed a contract in September 1976 which provided for a similar joint management-Guild worker participation committee.[22]

Carmichael contends that although management clearly retains the right to make final decisions, the contractual ability of the Guild to raise any question, challenge any policy, exists. Management's response goes on the record and is available to Guild members through the minutes. We feel that is a healthy development.[23]

The Minneapolis Star and Tribune is also one of three Guild contracts that contain a statement providing for Guild

consultation (though not a veto) on the appointment of supervisory personnel.

The Twin Cities are not the only places where Voice has been an active concern.

A new contract at the Saskatoon (Sask.) Star-Phoenix provides for periodic meetings between Guild members and management to discuss the paper's editorial content.[24]

The Woodbridge (N.J.) News Tribune instituted a Voice in the product committee in October 1974. Among the issues raised at the initial meetings were beat coverage, changes in work assignment, a revitalized photo policy, changes in editorial policy, more communication between management and reporters, and reinstitution of investigative reporting.

Two of the primary movers of Voice in the product were the Guild units at the Denver Post and the Chicago Sun Times and Daily News. At the Post, an ethics and human rights committee was established to meet with management on hiring practices and editorial content. Three Post editorial workers meet monthly with three members of management.[25]

At the Chicago Sun Times and Daily News, a ten-month attempt to secure Voice was finally stifled by management. In late 1971 the Sun Times Guildsmen put together a proposal that included an employes' veto of the appointment of new department heads, a say in the direction of news coverage by the papers as determined at regular staff meetings, and equal space on the editorial page to air the staff's democratically determined disagreement with management opinions.

But the Guild's proposals were met with negativism by management's chief bargainer Robert McAllister, vice president of Field newspapers, who viewed the proposals as pie-in-the-sky idealism. "We are not engaged in a college debate on social justice," he told the Chicago Guild. "We're engaged in negotiating a union contract. It's dollars and cents."[26]

The company refused to move on anything relating to reporter power. After ten months, the company had been able to reduce the Guild's Voice proposals to notifying a reporter of substantive changes in copy.[27]

Larry Finley, a reporter for the Chicago Daily News and a member of the negotiating team, contended that part of the reason the Guild lost on the Voice question in Chicago was the wide publicity the proposals received. Another problem was the tenuous support which the proposals got.

"When the push came, priorities were with the bread-and-butter, trade unionist issues, rather than with an amorphous attempt to solve a myriad of problems," Finley said.

Another factor working against Voice in the product was the traditional Guild method of negotiating, Finley stated.

"It seemed as though pinning the tag 'voice in the product' on a lot of ideas had diminished the ideas and had given some sort of undeserved reality and threatening importance to VIP."[28]

None of the provisions first sought in 1972 were won in the 1974-76 contract with Field Enterprises.[29] But, said Finley, "VIP didn't die in Chicago. One version simply was tried out and found lacking."

A different version of Voice was imposed by management recently at the New York Times but with negative results. Early in 1975 the Times instituted a check-sheet for reporters, a type of report card, on which supervisors were to comment on reporters' work, and reporters were encouraged to discuss the items with their editors. For the most part the report card was ill received by staff members.[30,31] They termed it a "joke," "ludicrous," and "offensive."

Peter Millones, assistant managing editor who had responsibility for editorial personnel, explained the purpose of the check-sheet:

"The idea is to encourage discussion between reporter and editor on possible improvement in performance, where appropriate. The reporter can add any comments he or she wishes [to the card]."

Millones said one reason for the forms was that "reporters and editors get caught up in their daily work and do not talk to each other about performance as regularly as they should. This approach will require them to communicate.[32]

"This procedure encourages the reporter and editor to discuss the future--aspirations and goals that the management of the paper should be aware of," he added.

The report card method, however, did not seem to be the kind of reporter power reporters at the Times had in mind. David Bird, shop steward for the Guild, posted a notice shortly after the forms were issued, which stated

"Management has told the Guild that you do not have to

sign [the form that evaluates your performance] and the Guild recommends that you do not.

The report card's existence was short-lived, however. By December 1976 Times management informed the Guild it had rethought the performance evaluation system and would cease using the existing form.

The potential for Voice beyond a management-imposed check-sheet exists in 60 per cent of Guild newspapers, either through standing committees or through the grievance procedure. The Guild International Executive Board determined that the best way to secure Voice would be through the grievance procedure, rather than through a separate functioning Guild-management committee. Therefore, those newspapers lacking a Voice committee per se still have the means for securing Voice if they have the phrase "affecting the relations of an employe and the employer" as part of the grievance clause.

Only three contracts contain provision for the second Voice item, that of consulting with the Guild prior to the appointment of supervisory personnel, and all three restrict the model language in some fashion. The third Voice item, that of representation on editorial boards and in news conferences, has not been accepted by any publisher, even in modified form.

Taken as a unit, Voice has been successfully obtained. Conceivably, questions regarding the appointment of supervisory personnel and matters concerning editorial policy could be raised under the first Voice item. But publishers have demonstrated their reluctance to include separate provisions for

consultation on supervisory appointments and representation on editorial boards.

Integrity

Under the seven items in the Integrity clause, the Guild seeks to protect the professionalism of the employe and the employe's product. The provisions range from protection of the right of reply to a letter critical of an employe's work to the right of an employe to refuse to perform any practice which he believes is a compromise of his integrity.

If the third Integrity item (I-3, control over the use of the byline) is deleted from the clause, the number of contracts with Integrity is small, smaller in general than the number with Privilege and much smaller than the number with Voice clauses.

The byline statement may be treated as a special case. It had been a part of the convention Recommendations since 1938.[33] In terms of the number of years alone it has been sought by the Guild, it is understandable that 129 of 189 contracts (68.3%) have byline coverage, and generally there are no restrictions on the model language (55.0%). In most cases where it exists, the byline clause has remained a separate "Miscellaneous" item rather than having been incorporated into a new Integrity clause.

As with Voice, none of the Integrity statements (with the exception of the byline) has gone to arbitration.

The first item of the clause is a broad one, covering any area that might compromise the employe's integrity. Only nine publishers have agreed to such a provision, and of those, half

have placed restrictions on the language.

The second statement, that of not being required to perform other duties, may be interpreted from reporters not being required to act as photographers and vice versa, to reporters not being required to write publicity copy or perform non-editorial functions. In many contracts job assignment provisions are spelled out and the right of the employer to assign work is sometimes written into the management rights clause. The majority of contracts numbered in the 17 with restrictive language on I-2 make statements about reporters acting as photographers and vice versa.

The editing of news copy is a necessary part of the newsroom process. Integrity statement 4, however, attempts to notify the employe of major revisions in his copy prior to his seeing the story appear in print. This provision calls into question the nature of the news product. It does not give the reporter veto power over editorial changes. It merely informs him of those changes prior to publication.

The byline is the reporter's signature on his work product. If substantial changes are made in that product before it is printed, the reporter may seek to disassociate himself from the altered product. If a contract contains both Integrity items 3 and 4, the reporter has the right to request removal of his byline. The same, of course, may apply to a photographer's work which has been edited.

Much of the publisher protest against inclusion of I-4 is not because the publisher wishes to conceal editing from the

reporter prior to publication but because time constraints are often such that it is difficult to inform the reporter of substantive changes in material. Of the 38 contracts that contain this provision, 34 have restricted the language by saying that the reporter's attention will be called to substantive changes "in the event a byline is to be used" or that "reasonable" attempts will be made to inform reporters prior to publication. In only four cases have publishers permitted language which would require them to notify reporters in every case.

The unqualified nature of the Guild's language on I-4 may be a limiting factor in its acceptance. The qualifier, "In the event a byline is to be used," was stricken from the Model Contract Integrity clause in 1972 yet remains in many contracts today. The I-4 statement has not been the subject of arbitration; hence, there is no precedent for what constitutes a "substantive change."

Statement I-5 is a protection against being required to report false or misleading information. Most publishers subscribe to a written or unwritten ethical code which precludes the publication of any false or distorted material. Several publishers have contended that writing into the contract a statement regarding such an ethical standard is unnecessary and even an affront to the publisher-reporter relationship. Of the 19 contracts that do contain such a provision, however, only two have language that is restrictive of the model language, and five go beyond model language to state that the employer or anyone outside of Guild jurisdiction will not prepare or

process any information that is false or misleading.

The last two sentences in the Integrity clause deal with printing corrections, retractions and letters to the editor. Of the 27 contracts that provide for consultation with the employe before a correction or retraction is printed, 15 have restrictive language. As with the substantive changes statement, the restriction is generally one of reasonableness in attempting to notify the employe concerned. Only eight contracts contain provision of the right of reply by the employe, and of those seven are restrictive--requiring that the material must have been bylined, exempting cases where libel is alleged, or dropping the requirement for simultaneous reply.

Aside from byline coverage, the Integrity issues which have been most successful are the right of an employe to be informed of major changes in his copy or of corrections or retractions to be printed regarding a story he had wirtten.

The most difficult issues to obtain coverage on have been protection against compromising one s integrity and writing false or misleading information. The printing-false-information statement may be viewed as superfluous by management rather than as an infringement of management rights. The first Integrity item, however, may be construed by publishers as a major infringement on management's right to assign work.

It is possible that in its attempt to secure some Integrity, the Guild has failed because of the unqualified nature of its statements. As one Guildsman pointed out, there is a difference between proposing a higher salary than you

expect to receive and proposing employe rights which you expect to receive only in part.[34]

Privilege

Fifty-one of the 189 contracts examined (27.0%) have some form of Privilege against disclosure of news sources. The degree of Privilege ranges, however, from allowing the newswriter not to disclose his source of information to a particular governmental agency to fully indemnifying the newswriter against any losses incurred for failing to reveal news sources.

The Guild's Privilege clause contains four main areas of concern (a) the right to refuse to disclose or authenticate source of any material, (b) assurance that the employer will not surrender such information without the employe's consent, (c) notification of the parties involved of a demand for surrender of information, and (d) indemnification against any losses suffered in the course of refusing to disclose information.

The first of these concerns is echoed by publishers' organizations such as the ANPA, which proposed a federal shield law against disclosure of sources in 1973 after the U.S. Supreme Court ruled in Branzburg v. Hayes [408 U.S. 665 (1972)] that reporters were required to testify before grand juries. Yet allowing reporters to refuse to disclose their sources and protecting them if they do are quite different matters.

In the breakdown of the eight Privilege statements in the Privilege clause, the percentage of contracts containing statements regarding indemnification is higher than the number

containing statements on nondisclosure alone. For example, of the 50 contracts with some statement about the employer paying legal fees (P-6), 24 have no statement regarding refusal to disclose information (the right to refuse in these cases is assumed). Of the 30 contracts with a statement on refusal to disclose information, only three lack a statement about the employer paying legal fees.

One Privilege statement that has received little acceptance by publishers is the employer's joining as a party in a suit against disclosure. Only 16 contracts (8.6%) contain such a statement.

The Guild Model Contract language assumes that the employer has complete faith in the judgment of his employe. The language makes no demands on the employe to reveal information to the employer, nor to follow the employer's legal counsel, yet it seeks full financial and legal support from the employer. It gives the employe full control over the disclosure issue.

Most publishers are unwilling to go this far, however (with some exceptions like the New Republic and the Morgantown (W.Va.) Dominion Post). Restrictions on the Guild's Privilege language include disclosing all information to the publisher and following the advice of publisher's legal counsel. In a sense the Privilege clause as written in most contracts provides protection only for the employe who accepts the publisher's judgment in a disclosure issue.

Newspapers with Privilege clauses tend to be small daily newspapers. Of course, here, too, there are exceptions such

as the New York Times. The Washington Post, the newspaper with perhaps the country's most publicized non-disclosure incident, has no Privilege language in the contract. Yet if we believe All the President's Men, Woodward and Bernstein were permitted to maintain the confidentiality of their sources even from the publisher--sans a contractual agreement to do so.

In the recent "Fresno Four" case in which the managing editor, ombudsman and two reporters for the Fresno (Cal.) Bee were sent to jail on Sept. 3, 1976, for 15 days for refusing to tell the judge the source of secret grand jury testimony used in a news story about official corruption in the city, the judge ruled that the California state shield law did not apply because it usurped the court's authority. And in New Mexico the state Supreme Court recently ruled that state's shield law invalid because it encroached on the authority of the courts.[35]

One reason reporters seek shield laws is to keep their news source channels open. To deny the reporter protection in carrying out this professional responsibility, the Guild suggests, is in part to negate that responsibility.

If shield laws can be written into state constitutions by statute, can they be written into labor contracts as well? Because 51 contracts currently exist with Privilege clauses, the answer may appear self-evident. Yet the question of the mandatory nature of bargaining on Privilege has not been determined by the National Labor Relations Board.

Does the clause violate basic management rights? Is

Privilege a mandatory subject on which the publisher is required by law to bargain? These questions first surfaced in 1972 in negotiations between the Portland (Maine) Newspaper Guild and the Guy Gannett Publishing Co., publishers of the Portland Press Herald, Express and Telegram.

The previous contract with Gannett expired in June 1972, and the Guild, in its initial proposal, submitted Model Contract language on Integrity and Privilege. (Voice as a bargaining issue was not brought up at that time.) After several negotiating sessions, the company declared that it was not interested in incorporating either Integrity or Privilege language in its contract. In a memo to its employes in February 1973 the company stated:[36]

> We do not feel this subject is properly a part of our collective bargaining agreement. As a matter of fact the legal department of ANPA and our own counsel are agreed that these subjects do not fall under the National Labor Relations Board rules for compulsory items for bargaining but are rather only permissive items for bargaining upon agreement of the parties.
>
> In our opinion these proposals constitute attempts to have a hand, indeed considerable control, in determining how and under what circumstances our product will be produced and what its nature shall be. If you will think about this carefully, I can't believe that fair-minded men would expect us to permit this.

The company shortly thereafter ceased to be willing to discuss the issue and the Portland Newspaper Guild on March 21, 1973, filed an unfair labor practice charge against the publisher.[37] One week later the publisher filed a counter charge against the Guild, claiming an unfair labor practice on the part of the union by attempting to bargain to impasse on

permissive subjects.[38]

National Labor Relations Regional Director Robert S. Fuchs (Region 1, Boston) deferred the matter to the General Counsel of the NLRB, Peter G. Nash, as there was no precedent for determining the mandatory bargaining nature of such a clause. The issue remained in the hands of General Counsel Nash without a decision being rendered until July 1975 (three years after the Portland contract had run out) when the Guild withdrew its unfair labor practice charge. Thus, the issue over the mandatory nature of the subject matter has not been clarified. Also remaining unanswered since the Guild's withdrawal of its unfair labor practice charge is a determination of the legal propriety of indemnification of employes. A question remains as to whether a contract with an agreement not to disclose would be contrary to public policy in a state where a shield law did not exist, and whether it would be proper for a publisher to be required to pay legal fees for someone who refused a court order to disclose.

The issues have been raised. They remain unresolved. Since the inclusion of the rights clauses in the bargaining program in 1970, there have been no arbitration cases nor any litigation (aside from the aborted Portland case) to establish NLRB policy on these issues.

Privilege, Integrity and Voice are all integral parts of reporter professionalism and are tied to the issues of worker participation and management rights. All of the Integrity and Privilege statements can and should be viewed in

the context of Voice in the quality of the product. Reporters are seeking contractual language that will in effect ensure their right to self-assessment of the quality of their reportorial product.

Traditionally, the nature and quality of the work product have been the exclusive rights of the employer to determine. The employe is told what to produce and at what quality level. Reporter power, or newsroom democracy, as a concept, challenges this tradition. It suggests that there should be a contractual means by which the employe can protect and improve the nature of his individual product and thereby affect the nature of the employer's overall product.

Through its attempt to incorporate guarantees of newsroom democracy in labor-management agreements, the Guild has embarked on a collective bargaining course into previously uncharted waters. The Guild's continued success (or its failure) in securing newsroom democracy under contractual agreements will impact significantly on the course of reporter-publisher relations in the newspaper industry and in a broader context will establish new definitional parameters for worker participation and management rights.

FOOTNOTES

1. Frederick Herzberg, B. Mausner and B.B. Snyderman, The Motivation to Work (New York: Wiley, 1959).

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3. Rensis Likert, New Patterns of Management (New York: McGraw-Hill, 1961).

4. John Carmichael, "Worker Participation in the U.S.: Seeds of a Quiet Revolution," an unpublished paper prepared as part of the Harvard Trade Union Program, Fall 1974, through a fellowship granted by the Bush Foundation, St. Paul, Minn., December 1974.

5. W.W. Daniel and Neil McIntosh, The Right to Manage? (London: Macdonald and Co., 1972), pp. 56-59.

6. Harold W. Davey, Contemporary Collective Bargaining (Englewood Cliffs, N.J.: Prentice-Hall, Inc., 1972), pp. 102-114.

7. Leo C. Brown, S.J., "The Shifting Distribution of the Rights to Manage," IRRA First Annual Meeting Proceedings (Champaign, Ill.: Industrial Relations Research Association, 1944), pp. 132-44.

8. Neil W. Chamberlain, The Union Challenge to Management Control (New York: Harper and Row, 1967), pp. 20-28.

9. Ibid., p. 168.

10. Transcript of Record: Supreme Court of the U.S., October Term 1936, No. 365. The Associated Press v. National Labor Relations Board. Brief on behalf of the American Newspaper Guild as amicus curiae.

11. Harry L. Connor, "Democracy in the Newsroom," Freedom of Information Center Report No. 328, School of Journalism University of Missouri at Columbia, October 1974, pp. 3-4.

12. K. Gruson, "Controlling the Press: The French Experience," Working Papers, September 1974, pp. 24-31.

13. Connor, op. cit.

14. M. Snidjers, "Charter Defines Dutch Editors Status," International Press Institute Reports, September 1976, p. 1.

15. Guild Reporter, Oct. 13, 1972.

16. Chicago Journalism Review 1(October 1968):1, p. 2.

17. American Newspaper Guild, Proceedings, No. 37 (1970), p. 115.

18. Ibid., p. 129.

19. Missing data include contracts with foreign publications and those contracts not in the Guild's central file at the time the data were collected. Some contracts used in the data base had expired prior to Sept. 1, 1976, but were continuing in effect pending completion of negotiations on new contracts.

20. Guild Reporter, Sept. 24, 1976, p. 2.

21. Guild Reporter, Oct. 25, 1974, p. 5.

22. Guild Reporter, Sept. 24, 1976, p. 2.

23. Guild Reporter, Oct. 25, 1974, p. 5.

24. Guild Reporter, Nov. 12, 1976, p. 3.

25. Connor, op. cit., p. 3.

26. Larry S. Finley, "Whatever Happened to Voice in the Product?" Chicago Journalism Review, April 1973, pp. 6-7.

27. Ibid., p. 7.

28. Ibid.

29. Field Enterprises, Inc., Newspaper Division, and Chicago Newspaper Guild Contract, June 1, 1974 - May 31, 1976.

30. Carla Marie Rupp, "Reporter Grading System Initiated at N.Y. Times," Editor and Publisher, Aug. 7, 1976, pp. 9, 29.

31. _____, "Rating System Bothers N.Y. Times Reporters," Editor and Publisher, Aug. 14, 1976, p. 10.

32. Editor and Publisher, Aug. 7, 1976, p. 9.

33. Letter from Richard J. Ramsey, executive secretary, Contracts Committee, The Newspaper Guild, dated Nov. 9, 1976.

34. Finley, op. cit., p. 7.

35. Editor and Publisher, Aug. 21, 1976, p. 2. Chief Justice Lafel Oman wrote: "Insofar as this statute seeks to provide a shield or privilege against disclosure of information in a judicial proceeding, this constitutes a rule of evidence.

Rules of evidence are procedural and are peculiarly within the province of this court to fashion and adopt. Procedural matters within the courts are for this court to determine and not for the legislature."

36. Memo from Robert B. Beith, publisher, Guy Gannett Publishing Co., to all employes, dated Feb. 12, 1973, pp. 2-3.

37. U.S.A. National Labor Relations Board Form NLRB-501: Charge Against Employer, Case #1-CA-8958, filed March 21, 1973, against Guy Gannett Publishing Co., Portland, Maine, by Portland Newspaper Guild.

38. U.S.A. National Labor Relations Board Form NLRB-506: Charge Against Labor Organization or Its Agents, Case #1-CB-2270, filed March 28, 1973, against Portland Newspaper Guild, Local 128, Portland, Maine, by Guy Gannett Publishing Co., Portland, Maine.

APPENDIX A

MODEL CONTRACT LANGUAGE

Voice

Item No.

V1 The Guild shall designate a committee of its own choosing to take up with the Employer or his authorized agent any matter arising from the application of this contract or affecting the relations of an employe and the Employer.

V1a The Guild shall designate a committee of its own choosing to meet with a committee of the Employer's choosing to discuss and to make recommendations affecting all aspects of the operations of all Guild-represented departments, including news coverage. The Guild committee shall meet with the Employer committee once a month. (V1 and V1a contained in ARTICLE VI: GRIEVANCE)

V2 The Guild shall be notified in writing of the name and qualifications of any person proposed for appointment to an excluded position. Such appointment shall not be effective until discussed with the Guild. (ARTICLE I: COVERAGE, Sec. 2(b))

V3 The Guild shall be represented in any editorial or news conferences or boards by representatives of its own choosing. (ARTICLE XXIV: GENERAL PROVISIONS, Sec. 8)

Employe Integrity

I1 An employe shall not be required to perform, over his protest, any practice which in his judgment compromises his integrity.

I2 An employe shall not be required to use his position as an employe for any purpose other than performing the duties of his position.

I3 An employe's byline or credit line shall not be used over his protest.

I4 Substantive changes in material shall be brought to the employe's attention before publication.

I5 An employe shall not be required to write, process or prepare anything for publication in such a way as to distort any facts or to create an impression which the employe knows to be false.

Item No.

I6 If a question arises as to the accuracy of printed material, no correction or retraction of that material shall be printed without prior consultation with the employe concerned.

I7 An employe whose work or person is mentioned in a letter to the editor shall be informed of such letter immediately and shall have the right to respond to such letter simultaneously on the page on which it is published.

Privilege Against Disclosure and Authentication

P1 An employe may refuse, without penalty or prejudice, to give up custody of or disclose any knowledge, information, notes, record, documents, films, photographs, or tapes or the source thereof, which relates to news, commentary, advertising or the establishment and maintenance of his sources, in connection with his employment.

P2 An employe may also refuse, without penalty or prejudice, to authenticate any material.

P3 The Employer shall not give up custody of or disclose any of the above without consent of the employe.

P4 The Employer shall notify the employe concerned, and the Guild, of any demand on the Employer for such surrender or disclosure or authentication.

P5 If the employe is proceeded against under law on account of his refusal to surrender or disclose or authenticate, the Employer shall move to join as a party to such proceedings;

P6 [The Employer] shall meet all expenses incurred by the employe, including fees and expenses of legal counsel retained by the employe;

P7 And [the Employer] shall indemnify such employe against any monetary loss including but not limited to fines, damages or loss of pay.

P8 In no case shall an employe suffer loss of wages, employe status or benefits under this contract as a result of his refusal to surrender or disclose or authenticate.

Table 1

PERCENTAGE OF CONTRACTS CONTAINING
NEWSROOM DEMOCRACY PROVISIONS

		Type of Contract Language			
Provision	N	Restrictive	Model	Model-Plus	Total Coverage
V1-Joint Committee	185	3.2 %	29.7 %	26.5 %	59.5 %
V2-Approve Supervsrs	185	1.6	0.0	0.0	1.6
V3-Bd Representation	185	0.0	0.0	0.0	0.0
I1-Ethics	189	2.1	2.1	0.5	4.8
I2-Job Duties	189	9.0	4.8	0.0	13.8
I3-Byline	189	12.7	55.0	0.5	68.3
I4-Copy Changes	189	18.0	2.1	0.0	20.1
I5-False Info	189	1.1	6.3	2.6	10.1
I6-Retractions	189	7.9	6.3	0.0	14.3
I7-Rt of Reply	189	3.7	0.5	0.0	4.2
P1-Disclosure Priv	189	14.8	1.1	0.0	15.9
P2-Authenticate Priv	189	6.9	1.1	0.0	7.9
P3-Keep Confidence	189	6.3	1.6	0.0	7.9
P4-Notify of Demand	189	20.1	5.8	0.0	25.9
P5-Join as Party	189	5.8	2.6	0.0	8.5
P6-Pay Legal Fees	189	23.3	3.2	0.0	26.5
P7-Pay Losses	189	23.8	3.2	0.0	27.0
P8-Pay All Losses	189	2.6	1.6	0.0	4.2